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TAGS: PTER PGOV PREL ECON SOCI CO
SUBJECT: HUMAN RIGHTS AND INTERNATIONAL HUMANITARIAN LAW
CONFERENCE

REF: BOGOTA 3625

Classified By: Political Counselor John S. Creamer
For Reasons 1.4 (b) and (d)

SUMMARY

¶1. (C) The USG co-hosted a two-day conference on international humanitarian law and international human rights law, as well as measures to promote the Colombian military's respect for human rights, with the Colombian Defense Ministry. The conference was attended by officials from the Prosecutor General's (Fiscalia) office, the Ministry of Defense (MOD) and Armed Forces. Government participants told us that legal clarity, resources and interference in the judicial process by interested parties remain challenges. Most participants agreed that mission-specific rules of engagement, more situation-based training, better trained operational lawyers, and greater integration of legal advice, intelligence, and tactical military planning are key to improving the military's human rights record. END SUMMARY.

¶2. (U) The conference was attended by 40 officials of the Prosecutor General's (Fiscalia) office, 40 representatives from the Ministry of Defense (MOD) and Armed Forces, five retired generals, and officials from the United Nations High Commission on Human Rights (UNHCHR) and the International Committee of the Red Cross (ICRC). Keynote speakers included Fiscal General Mario Iguaran, Vice Defense Minister Sergio Jaramillo, Colombian Armed Forces Commander Freddy Padilla, Geneva-based International Committee of the Red Cross (ICRC) expert Nils Metzler and National Defense University Professor Harvey Rishikof. Ambassador Brownfield provided closing remarks. Southern Command and USDOJ funded the event.

CHALLENGES: LEGAL CLARITY, RESOURCES, AND INTERFERENCE

¶3. (C) ICRC Metzler said it is hard to determine in Colombia when HR or IHL applies due to the presence of illegal armed groups funded by narcotics trafficking, fighters frequently dressed as civilians, and the illegal groups' use of part-time fighters. Colombian Constitutional Court magistrates noted that HR law applies all of the time in Colombia, but added that its application may be modified by IHL. Fiscalia Human Rights Director Sandra Castro said any alleged HR or IHL violations must be heard in the civilian courts; the military criminal justice system has jurisdiction only over purely military crimes. Military Criminal Justice Director Luz Marina Gil agreed with Castro, but criticized the magistrates for their presentations' lack of clarity on

the jurisdictional issue. She attributed this to their reluctance to confront the generals present. Gil said a June 2006 MOD-Fiscalia accord gives the Fiscalia primary responsibility for investigating HR/IHL cases, but said the MOU has not settled the jurisdictional issues.

¶4. (C) Participants recognized that in practice, the military criminal justice system (JPM) has made significant progress in handing HR and IHL cases over to civilian courts.

Still, many military criminal courts continue to incorrectly assert jurisdiction in HR and IHL cases--leading to lengthy delays in investigations. Gil said the main obstacles are military judges' lack of training in IHL and HR law, the JPM's meager resources, and "pressures from within the military due to distrust of the Fiscalia." She said some commanders continue to press military judges to claim jurisdiction in HR cases, adding that they use the promotion system to manipulate them. UNHCHR Jesus Pena said the recent jurisdictional back and forth in the investigation of the Soacha missing persons, from the JPM to the Fiscalia and back again, highlights the lack of jurisdictional clarity that leads to interference.

¶5. (C) Iguaran apologized to the generals for the way former General Del Rio--accused of paramilitary ties--was arrested in front of his elderly mother at the Military Club, but criticized the military's failure to provide security and logistical support to prosecutors investigating alleged extrajudicial killings in Putumayo. Gil and Castro told us that a proposed memorandum of understanding (MOU) between the MOD and the Fiscalia defining each institution's roles and obligations at the scene of combat deaths would help to

resolve some of the practical obstacles to civilian investigation of alleged HR and IHL violations. Castro said such a MOU would also have to address resource issues, such as the need for military airlift to transport civilian prosecutors to combat scenes--a key issue that prevents the successful resolution of many of alleged extrajudicial killings.

PREVENTION OF HR AND IHL ABUSES

¶6. (SBU) Most participants agreed that mission-specific rules of engagement (ROEs), more situation-based training, better trained operational lawyers, and greater integration of legal advice, intelligence, and tactical military planning are the keys to improving the military's human rights record.

Metzler said mission-specific rules of engagement must be based on whether an operation is law enforcement-based or military-based. All targets are considered civilians unless proven otherwise, meaning more restrictive law enforcement ROEs apply. IHL--and its more permissive ROEs--applies only when targets are part of an armed group that meets the Geneva protocols' definition of a party to a conflict. This requires the group to: 1) have a military command structure, 2) possess the capacity to sustain prolonged military operations, and 3) engage in frequent clashes with state security forces.

¶7. (SBU) Metzler said that if a target is a civilian who is directly participating in the hostilities, the civilian loses his or her protection under IHL and can be targeted by military forces. Some of the most difficult questions arise, when a civilian suspends his participation in an armed engagement and returns home. He argued that at such a point, the civilian may regain the protections afforded civilians by IHL. Making these determinations regarding part-time fighters--as is the case with FARC militia--requires sound intelligence as well as legal advice. He added that the intermingling of civilian with combatants does not mean the combatants cannot be attacked. A judgment on the legality of military action in such circumstances requires an evaluation of the military advantage to be gained, the likely extent of the harm to civilians, and the incorporation of operational measures designed to minimize civilian casualties.

¶ 8. (C) Jaramillo announced that the MOD is working on an Operational Manual, the first draft of which was by MOD Human Rights Director Colonel Gomez. Gomez said he hopes the manual will provide the needed clarity to the troops on the ground and invited comments from the Fiscalia, ICRC, UNHCHR and the USG. He explained that the new embedded operational lawyers lack field experience; the manual will assist them in their work. Gomez said the manual had been cleared by the Fiscalia's Technical Investigative Corps (CTI). Castro voiced concern that the Human Rights Unit had not had an opportunity to provide input. Gomez noted the primary challenge is condensing the complicated HR and IHL legal issue into short, concise instructions that could be understood by commanders and troops in the field--the first draft was over 90 pages.

¶ 9. (C) Local ICRC official Yves Heller said the military receives fewer hours of HR and IHL training now than before, and added that the training remains overly academic and not situation-based. Pena told us he was "disappointed" in General Padilla's presentation on "command responsibility" in the prevention and investigation of rights violations. He said that although Padilla mentioned the recent reports of extrajudicial killings from Soacha (reftel), he talked more about the low-level commanders' responsibilities rather than the duties of senior officers. Jaramillo told us that senior command leadership will be key in changing the military culture, which has led to too many human rights abuses in the past.

¶ 10. (C) Castro and Jaramillo told us separately that the conference was useful in clarifying key issues such as command responsibility and use of force where civilians are also present. Jaramillo said the conference also strengthened the hand of reformers within the military, and reinforced the need to continue to improve the quality of legal advice available to commanders in planning operations. Through DOJ, Southcom and USAID, we will continue to work with Fiscalia and MOD legal staff to improve their

understanding of IHL and to clarify their respective duties and obligations at the scene of combat deaths. We will also work with the MOD to improve their ROEs and internal disciplinary system, as well the Operational Manual.

BROWNFIELD